

# Exhibit D

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

GLORIA ARTHUR, on behalf of herself  
and all others similarly situated,

Plaintiff,

v.

THE STANDARD FIRE INSURANCE  
COMPANY AND THE TRAVELERS  
INDEMNITY COMPANY,

Defendants.

Civil Action No. 09-7332

Judge Carl J. Barbier

**[PROPOSED] PRELIMINARY APPROVAL AND NOTICE ORDER**

WHEREAS, this matter has come before the Court pursuant to a Joint Motion Seeking Entry of the Preliminary Approval Order (the "Joint Motion");

WHEREAS, the Court finds that it has jurisdiction over this action and each of the parties for purposes of settlement and that venue is proper in this district;

WHEREAS, the Court has considered the Joint Motion, the Settlement Agreement and exhibits thereto, and all other documentary evidence submitted concerning the Joint Motion; and

WHEREAS, the Court has conducted a preliminary approval hearing on \_\_\_\_\_, 2010 and is otherwise fully advised in the premises and on considering the record of these proceedings, the representations, argument, and recommendation of counsel for the parties, and the requirements of law.

**IT IS HEREBY ORDERED THAT:**

**I. PRELIMINARY APPROVAL OF THE SETTLEMENT AGREEMENT**

The terms of the Settlement Agreement and Release between the Settlement Class Representative on behalf of herself and the Settlement Class (the "Plaintiffs") and The Standard

Fire Insurance Co. and The Travelers Indemnity Company (“Travelers”), dated September 11, 2009, including all exhibits thereto (the “Proposed Settlement Agreement” or “Proposed Settlement” annexed hereto as Exhibit A) are preliminarily approved, subject to further consideration thereof at the Fairness Hearing provided for below. Unless otherwise provided herein, the terms defined in the Proposed Settlement Agreement shall have the same meaning in this Order. The Proposed Settlement was entered into at arms-length by experienced counsel and only after extensive arms-length negotiations. The Proposed Settlement is not the result of collusion. The Proposed Settlement bears a probable, reasonable relationship to the claims alleged by Plaintiffs and the litigation risks of Plaintiffs as well as Travelers. The Proposed Settlement is sufficiently within the range of reasonableness so that notice of the Proposed Settlement should be given as provided by this Order.

## **II. PRELIMINARY CERTIFICATION OF THE SETTLEMENT CLASS**

The following Settlement Class is preliminarily certified for settlement purposes only, in accordance with Rule 23(a) and Rule 23(b)(3) of the Federal Rules of Civil Procedure:

All persons, including but not limited to their assignees, subrogees, and lienholders (including the State of Louisiana), who sustained any loss or damage of any kind, arising in any way out of damage, destruction, or harm to property in the State of Louisiana related in any way to Hurricanes Katrina and/or Rita, and who, at the time of the loss, had any rights under a policy of insurance from Travelers. Loss or damage includes but is not limited to: (1) loss or damage to real or personal property; (2) the incurring of additional living or business expenses; or (3) the loss of any business or other income. The class excludes all persons, other than the State of Louisiana as plaintiff in the Road Home Litigation, who have a suit pending against Travelers as of the date of the Preliminary Approval Order related in any way to losses stemming from Hurricanes Katrina and/or Rita. The class also excludes class counsel, members of the judiciary, their administrative staff and any other personnel who may cause a member of the Louisiana bench to be unable to preside over this action. Notwithstanding the above, the class does not include the State of Louisiana as assignee of claims by non members of the class.

The Court is exercising its discretion and preliminarily certifying the Settlement Class for settlement purposes only and has not determined whether the Action could properly be

maintained as a class action on behalf of the Settlement Class for purposes of trial. The Court recognizes that Travelers has reserved all its defenses and objections and rights to oppose certification of a class if the Settlement Class is not certified at the Certification Hearing, the settlement is not finally approved by the Court following the Fairness Hearing, and/or if the Class Settlement Agreement is terminated for any reason.

### **III. APPROVAL OF SETTLEMENT CLASS REPRESENTATIVES AND SETTLEMENT CLASS COUNSEL**

The nomination by Settlement Class Counsel of the following person to serve as provisional Settlement Class Representative is hereby approved: Gloria Arthur.

The following are hereby approved as Settlement Class Counsel: Calvin C. Fayard Jr., N. Frank Elliott III, Frank C. Dudenhefer, Wanda Edwards, and Joseph M. Bruno.

### **IV. NOTICE TO SETTLEMENT CLASS**

The Court directs Settlement Class Counsel or their designated Notice Administrator to provide Notice to the Class in the form of the detailed Settlement Notice attached hereto as Exhibit B. Travelers shall provide names and addresses for all Settlement Class Members within 60 days of the date when this Order is entered. Notice to Settlement Class Members will be given by direct mail. The Notice Administrator will perform skip tracing on all returned notices to attempt to locate a current address and will re-mail notices to all Settlement Class Members whose notices were returned for improper address and for whom the Notice Administrator is able to locate a current address.

Settlement Class Counsel or their designated Notice Administrator shall also provide summary notice to Settlement Class Members by publication in the form attached hereto as Exhibit C. The published notice plan is described in Exhibit D.

Class Settlement Counsel or the Notice Administrator are further directed to create a website providing notice to all Settlement Class Members. In addition, all Settlement Class

Members shall be directed to review a copy of the detailed Settlement Notice in the form attached hereto as Exhibit B which Class Settlement Counsel or the Notice Administrator will publish on the website and mail to any Settlement Class Member upon request.

Notice shall be completed within 120 days following entry of this Order.

The Court finds that the mailing and publication described in this section (“Class Notice”) constitutes the best notice practicable under the circumstances, and is due and sufficient notice to the Settlement Class, and the Class Notice fully satisfies the requirements of due process and Rule 23(c)(2)(B).

The Settlement Class shall be liable for the first \$75,000 in expenses associated with the provision of notice to the members of the Settlement Class, including any fees for professional services rendered by any person providing notice. Travelers, will however, agree to advance monies to be paid by the Settlement Class for notice from the \$1,000,000 payment described in Section II(9)(A)(1). Travelers shall be liable for all notice expenses in excess of this amount. The Settlement Class shall be liable for all other costs associated with the administration of the settlement embodied by this Agreement.

**V. NOTICE REQUIRED BY 28 U.S.C. § 1715(a)**

The Court finds that the form, content, and manner of service of notice required by 28 U.S.C. § 1715 on the Attorney General of the United States, which this Court finds to be the “appropriate Federal official,” and the regulator of insurance of each State of the United States, which the Court finds to be the “appropriate State Official,” complies with applicable law, including specifically the requirements of 28 U.S.C. § 1715. Such notice is attached hereto as Exhibit D.

## **VI. OPT OUT PROVISION**

Settlement Class Members are permitted to opt out of this Settlement via an opt-out procedure. In order to opt out of the Settlement, Settlement Class Members must submit a letter requesting exclusion to the Notice Administrator postmarked no later than 45 days after the last notice is provided, whether by mail or by publication. The request must be signed and must include the class member's name, address, and policy number. The request must also state: "I/we request that I/we be excluded from the Settlement in *Arthur v. Travelers*, Case No. 09-7332." Travelers has the right to rescind the settlement in accordance with the parameters specified in the Supplemental Agreement filed by the parties under seal on February \_\_, 2010.

## **VII. RESPONSE TO AMENDED CONSOLIDATED COMPLAINT**

Travelers shall not be required to file an Answer to the Amended Consolidated Complaint in this Action. The deadline for Travelers to respond to the Amended Consolidated Complaint is extended indefinitely pending the outcome of the settlement approval process. Class Representatives in this Action have agreed to dismiss it with prejudice if the Settlement Agreement is terminated for any reason.

## **VIII. FINAL APPROVAL HEARING**

The Court hereby schedules a Final Approval Hearing to determine whether there exists any reasonable basis why the Settlement should not be approved as being fair, reasonable, and adequate, and in the best interests of the Settlement Class and why judgment should not be entered thereon. The hearing will take place on \_\_\_\_\_, 2010, at \_\_\_\_\_ a.m. The Final Approval Hearing may, from time to time, without further notice to the Settlement Class, be continued or adjourned by Order of the Court. However, the Final Approval Hearing will not take place less than six months after the date of this Order to allow time for the notice, claims, opt out and objections procedures set forth herein.

Any person who has not requested exclusion from the Settlement Class and who objects to the Settlement may appear in person or through counsel, at his or her own expense, at the Final Approval Hearing (or at such other time as may be directed by the Court) to present any evidence or argument that may be proper and relevant. However, no such person shall be heard and no papers, briefs, pleadings, or other documents submitted by any person shall be received and considered by the Court unless no later than 30 days before the date of the Final Approval Hearing, such person files a written objection with the Court and serves a copy of the written objection on Settlement Class Counsel and Travelers Counsel. Any person who fails to object in the manner prescribed herein shall be deemed to have waived his or her objections and forever be barred from making any such objections in this action.

#### **IX. ATTORNEYS' FEES AND COSTS**

Settlement Class Counsel will apply for approval by the Court of their request for attorneys' fees and costs. Travelers shall not be liable for, and shall have no responsibility for payment of, any Settlement Class Counsel's attorneys' fees or costs. Travelers shall have no obligation to pay any amount beyond the Settlement Fund.

#### **X. TERMINATION**

If the Settlement Agreement is terminated, (a) the Agreement shall have no effect on the rights of the Parties or the Class Members (i) to take any action in support of or in opposition to class certification in the Filed Actions, or (ii) to prosecute or defend the Filed Actions or any other action, and (b) subject expressly to the reservation and preservation of rights and defenses and all Parties and Class Members shall be restored to their respective positions immediately prior to the date the Parties signed the Settlement Agreement. In such event, the Settlement Agreement and all negotiations, proceedings, documents prepared and statements made in connection herewith shall be without prejudice to the Parties, and shall not be deemed or

construed to be an admission or confession by or against any Party of any fact, matter, or proposition of law, whether in the Filed Actions or otherwise.

The Settlement Agreement, the evidence introduced at the preliminary hearing on the Joint Motion, or that may be introduced into evidence at the Final Approval Hearing, or in connection with any related motion (including any motion to enjoin or stay any of the Filed Actions), and all negotiations, proceedings, documents prepared and statements made in connection herewith, shall be without prejudice to Plaintiffs and Travelers, and shall not (i) be deemed or construed to be an admission or confession by or against any Party of any fact, matter, or proposition of law; (ii) constitute, be construed as, or be admissible as evidence of an admission by or against any Person, including any Party or Settlement Class Member, that this Action or any other proposed or certified class action, can be or is properly certified for trial or litigation purposes under Article 591, *et seq.*, of the Louisiana Code of Civil Procedure, Rule 23 of the Federal Rules of Civil Procedure, or any similar statute or rule; (iii) constitute, be construed, be offered, or received into evidence as an admission of the validity of any claim or defense, or the truth of any fact alleged or other allegation in the Action, the Filed Actions, or in any other pending or subsequently filed action, or of any wrongdoing, fault, violation of law, or liability of any kind on the part of Travelers, or (iv) be used to establish a waiver of any defense or right, or to establish or contest jurisdiction or venue.

## **XI. MODIFICATIONS**

Prior to the entry of the Final Approval Order and Judgment, the Settlement Agreement may, with approval of the Court, be modified by written agreement of Settlement Class Counsel and Travelers Counsel in their discretion without giving any additional notice to



the Class (other than the notice given with respect to the settlement and the Final Approval Hearing), provided that such modifications are not materially adverse to the Class.

DATED:

This \_\_\_\_ day of \_\_\_\_\_, 2010

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Honorable Carl J. Barbier  
United States District Court